

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

MEMORANDUM OM 04-82

August 31, 2004

TO: All Regional Directors, Officers-In-Charge,  
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Agreement Between NLRB and IRS

This month the General Counsel entered into a Memorandum Agreement with the Internal Revenue Service (IRS) to address situations where the Agency has been served with a notice of levy and a discriminatee, who is or may be due to receive a backpay award, has an outstanding tax liability. The agreement provides for a consistent, predictable approach to these situations, which in the past have been handled on an ad hoc basis. This agreement, a copy of which is attached, requires a Regional Office to forward a discriminatee's backpay award check to the IRS if the Region has been served with a notice of levy and there is a final nonappealable determination of liability and a liquidated backpay award. If the backpay amount exceeds the tax liability, the IRS will refund the excess amount to the discriminatee. Where the backpay award has not been liquidated, the Regional office will notify the IRS contact person listed on the notice of levy, in writing, that the amount of the backpay award and the date of distribution is unknown, and will provide an estimated date of liquidation where possible. In the event the Respondent has forwarded the backpay check to the NLRB Finance Branch for distribution and the check is made payable to the NLRB, the Region should instruct the Finance Branch to send the money directly to the IRS. If the levy amount is less than the backpay, the Region should instruct the Finance Branch to send one check to the IRS for the levy amount and one check to the discriminatee for the remainder. The Memorandum Agreement also requires the IRS to notify the appropriate Regional Office of the NLRB by service of a release of levy when the IRS decides to forego collection or the tax liability has been satisfied prior to the liquidation of the backpay award. In addition, in cases where there has been no final nonappealable determination of liability under the NLRA, the Regional office will fill out the back of the levy form indicating that no backpay award is currently owed to the taxpayer (discriminatee) and will send the levy form back to the IRS. If and when liability is finally determined and the backpay award is liquidated, the Regional office will advise the IRS to serve another notice of levy form. These procedures apply whenever backpay is due the discriminatee, including backpay due pursuant to a settlement.

We have provided the IRS with a list of all NLRB Regional Directors as the appropriate Regional Office contact persons for purposes of effectuating this agreement. A committee of field and headquarters personnel will shortly be developing changes to the casehandling manual to reflect these new procedures. Until these changes are announced, the Regions may contact Special Litigation for assistance.

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If you have any questions about this, please contact your AGC, Deputy or the undersigned.

/s/  
R.A.S.

cc: NLRBU  
Released to the Public

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## MEMORANDUM AGREEMENT BETWEEN THE NATIONAL LABOR RELATIONS BOARD AND THE INTERNAL REVENUE SERVICE

To further the interest of the National Labor Relations Board (NLRB) in effectuating the remedial policies of the National Labor Relations Act (NLRA) and the interest of the Internal Revenue Service (IRS) in efficient tax collection, the NLRB and the IRS hereby agree to the following levy arrangement with respect to backpay awards.

The IRS agrees to serve notices of levy for backpay awards solely upon the appropriate Regional Office of the Board and not on the respondent employer or union in the NLRB proceeding.

The NLRB agrees to treat the IRS notices of levy that are served on the NLRB at its Regional Offices in the manner set forth below:

1. In cases where there has been a final nonappealable determination of liability, **and** the backpay award due the taxpayer has been liquidated, the Regional Office will send payment in satisfaction of the notice of levy. If the backpay award check reflects the taxpayer as payee instead of the NLRB, the Regional Office will forward that check to the IRS. In cases where the backpay check reflects the taxpayer as payee instead of the NLRB and is for an amount more than the taxpayer's outstanding tax liability, the Regional Office will forward the backpay check to the IRS and the IRS will treat the excess as an overpayment and refund the remainder of the backpay award to the taxpayer subject to the IRS's setoff rights.
2. In cases where there has been a final nonappealable determination of liability, **but** the amount of the backpay award due the taxpayer has not yet been liquidated, the NLRB Regional Office will notify the contact person listed on the notice of levy in writing that the amount of the backpay award and date of distribution is unknown at this time. The Regional Office will provide an estimated date of liquidation, if available. Once the backpay amount is liquidated and payment is received, the Regional Office will send payment to the IRS following its receipt or will forward the backpay award check payable to the taxpayer, to the IRS. As in paragraph 1 above, if the backpay award check payable to the taxpayer is for an amount more than the taxpayer's outstanding tax liability, the IRS will treat the excess as an overpayment and refund the remainder of the backpay award to the taxpayer subject to the IRS's setoff rights.
3. In cases such as in paragraph 2 above, where a notice of levy has been served upon the NLRB and the tax liability is subsequently satisfied or the IRS decides to forego collection, the IRS will serve a release of levy on the appropriate Regional Office and the NLRB will no longer be subject to the levy.

4. In cases where there has been no final nonappealable determination of liability such as where the case is still being investigated or prosecuted or where an appeal is pending, the Regional Office will complete the back of the notice of levy form indicating that no backpay award is owed to the taxpayer, and will send it back to the IRS. If and when liability is finally determined and a taxpayer's award has been liquidated, the Regional Office will advise the IRS to serve another notice of levy form upon the Board.

Approved by:

John E. Higgins / for Date: 8/10/04

Arthur F. Rosenfeld  
General Counsel  
National Labor Relations Board

L. Cutler / for Date: 8/2/04

Cheryl Sherwood  
Director, Payment Compliance  
Internal Revenue Service